

REMARKS

This Application has been carefully reviewed in light of the Final Action mailed October 12, 2005. In order to advance prosecution of this Application, Claims 1, 11, 16, and 21-25 have been amended. Applicant respectfully requests reconsideration and favorable action in this Application.

Claims 1-6, 11, 12, 16-18, 21, and 22 stand rejected under 35 U.S.C. §102(b) as being anticipated by Jungck, et al. Independent Claims 1, 11, 16, and 21 recite in general the ability to process packets in a gateway having a multi-processor environment, receive a set-up request packet for a communication session, initially processing the set-up request packet to determine which of a selected one of a plurality of processors in the gateway is to handle the set-up request packet, and directly route in the gateway subsequent packets associated with the communication session to the selected one of the plurality of processors in response to the virtual identifier without performing the initial processing. By contrast, the Jungck, et al. patent performs initial processing of all packets entering its router 702 by a packet analyzer/network processor (712, 804, 906A, 906B) before passing the packet to another processor, coprocessor, or external device for packet processing. Thus, the Jungck, et al. does not directly route packets in the gateway to a selected one of a plurality of processors without performing initial processing as required by the claimed invention. Therefore, Applicant respectfully submits that Claims 1-6, 11, 12, 16-18, 21, and 22 are not anticipated by the Jungck, et al. patent.

Though not specifically stated, it also appears that Claims 10, 15, 20, and 25 stand rejected under 35 U.S.C. §102(b) as being anticipated by Jungck, et al. The Examiner

indicates that the features of Claims 10, 15, 20, and 25 are inherent in the Jungck, et al. patent. However, as pointed out above, Independent Claims 1, 11, 16, and 21 are patentably distinct from the Jungck, et al. patent. Therefore, Applicant respectfully submits that Claims 10, 15, 20, and 25 are patentably distinct from the Jungck, et al. patent.

Claims 7-9, 13, 14, 19, 23, and 24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Jungck, et al. in view of Kashyap. Independent Claim 1, from which Claims 7-9 depend; Independent Claim 11, from which Claims 13 and 14 depend; Independent Claim 16, from which Claim 19 depends; and Independent Claim 21, from which Claims 23 and 24 depend, have been shown above to be patentably distinct from the Jungck, et al. patent. Moreover, the Kashyap patent does not include any additional disclosure combinable with the Jungck, et al. patent that would be material to patentability of these claims. Therefore, Applicant respectfully submits that Claims 7-9, 13, 14, 19, 23, and 24 are patentably distinct from the proposed Jungck, et al. - Kashyap combination.

This Response to Examiner's Final Action is necessary to address the new grounds of rejection and newly cited art introduced by the Examiner. This Response could not have been presented earlier as the Examiner has only now introduced the new grounds of rejection and newly cited art in support thereof not previously of record in the Application.

Applicant respectfully requests withdrawal of the finality of the present Office Action. "Before final rejection is in order a clear issue should be developed between the examiner and applicant." M.P.E.P. §706.07. A clear issue has not been developed between the Examiner and Applicant with respect to the Jungck, et al. and Kashyap patents as the Examiner has only now used the Jungck, et al.

and Kashyap patents for the first time as the main support for the rejection of these claims. According to M.P.E.P. §706.07, hasty and ill-considered final rejections are not sanctioned. "The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application." M.P.E.P. §706.07. "To bring the prosecution to as speedy conclusion as possible and at the same time to deal justly by both the applicant and the public, the invention as disclosed and claimed should be thoroughly searched in the first action and the references fully applied; and in reply to this action the applicant should amend with a view to avoiding all the grounds of rejection and objection." M.P.E.P. §706.07.

Applicant responded to the first Office Action of April 6, 2005 and overcame the Aviana, et al. and Hamami patents as the primary reference used by the Examiner to reject these claims. Now the Examiner comes back with the Jungck, et al. and Kashyap patents in place of the Aviana, et al. and Hamami patents which were available to the Examiner for consideration in the previous Office Action but which the Examiner did not use as a basis for any rejection of these claims in the previous Office Action. The Examiner now uses the Jungck, et al. patent in the same manner as the Aviana, et al. patent was used in the previous Office Action. Thus, the Examiner has not followed the M.P.E.P. where it states that "[s]witching from . . . one set of references to another by the examiner in rejecting in successive actions claims of substantially the same subject matter, will alike tend to defeat attaining the goal of reaching a clearly defined issue for an early

termination, i.e., either an allowance or a final rejection." Amendments to the claims in response to the previous Office Action did not substantially change the subject matter of the claims to force the Examiner to now use the Jungck, et al. and Kashyap patents where they could not have been used in the previous Office Action. Based on this fact alone, the finality of the present action is premature.

As a result, Applicant has not been given the cooperation of the Examiner as required and has been denied an opportunity to fully address the Jungck, et al. and Kashyap patents and the associated new grounds of rejection that could have been cited in the previous Office Action. By not providing Applicant the capability to fully respond to the Jungck, et al. and Kashyap patents without the assurance that the response would be considered and entered, the Examiner has prematurely cut off prosecution of the present Application. Applicant has not been given a full and fair hearing to which it is entitled and a clear issue has not been developed as required. Therefore, Applicant respectfully submits that the final rejection is premature and that the finality of the present Office Action be withdrawn.

CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

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A handwritten signature in cursive script, appearing to read "Charles S. Fish".

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